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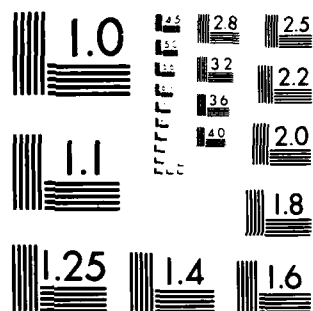
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BY THE U.S. GENERAL ACCOUNTING OFFICE

**Report To The Chairman, Committee  
On Interior And Insular Affairs  
House Of Representatives**

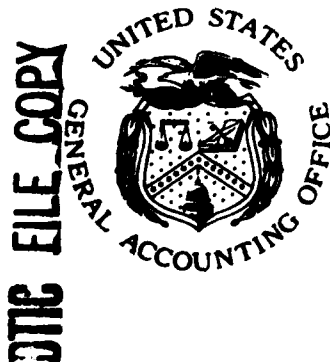
AD-A144 502

**Federal Government's Progress In Implementing  
A National Archeological And Historic  
Preservation Program**

As of February 1984, the Department of the Interior, the Advisory Council on Historic Preservation, and other federal agencies had taken actions to respond to 9 of the 16 recommendations GAO made in 1981 to correct problems in the administration and operation of the national archeological and historic preservation program. Also, Interior and the Advisory Council, which have primary roles in the program, had taken actions to comply with 35 of the 54 requirements of the National Historic Preservation Act Amendments of 1980.

Implementation of some recommendations and requirements had been suspended because of a dispute between the Office of Management and Budget (and other federal agencies) and the Advisory Council on whether the Council's regulations implementing section 106 of the National Historic Preservation Act exceed the Council's statutory authority. Section 106 requires federal agencies to provide the Council a reasonable opportunity to comment on the agencies' proposed projects. The parties are working to resolve the dispute.

Interior, which is responsible for approving preservation plans of states wishing to receive federal grants for historic preservation purposes, has developed a Resource Protection Planning Process model approach, which it encourages the states to use to integrate the identification, evaluation, and protection elements of preservation into their land use decisionmaking processes. As of February 1984, 24 states, the District of Columbia, and Puerto Rico were using or in the process of implementing the model approach.



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UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

RESOURCES, COMMUNITY,  
AND ECONOMIC DEVELOPMENT  
DIVISION

B-125045

The Honorable Morris K. Udall  
Chairman, Committee on Interior and  
Insular Affairs  
House of Representatives

Dear Mr. Chairman:

This report is in response to your committee's request that we follow up on our prior work on federal archeology activities. It describes the actions that federal agencies have taken to implement our prior recommendations in this area, the agencies' actions to meet the requirements the Congress passed in the National Historic Preservation Act Amendments of 1980, and the status of the Department of the Interior's approval of state historic preservation plans.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 10 days from its release date. At that time, we will send copies to the Director, Office of Management and Budget; the Secretaries of the Interior, Agriculture, and Housing and Urban Development; the Advisory Council on Historic Preservation; and other interested parties. We will also make copies available to others upon request.

Sincerely yours,

*Ralph H. Malone*  
J. Dexter Peach  
Director

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REPORT BY THE U.S.  
GENERAL ACCOUNTING OFFICE

FEDERAL GOVERNMENT'S PROGRESS  
IN IMPLEMENTING A NATIONAL  
ARCHEOLOGICAL AND HISTORIC  
PRESERVATION PROGRAM

D I G E S T

Over the years, the Congress has enacted several laws protecting archeological and other historic properties and making federal agencies responsible for (1) identifying such properties that may be affected by their actions, (2) determining the significance of the properties, and (3) recovering, documenting, or preserving them.

The National Historic Preservation Act Amendments of 1980--the latest such law--increased the role of states' historic preservation programs and clarified federal agencies' responsibilities for recovering, documenting, and preserving archeological, historical, or cultural resources on federal lands. (See pp. 1 to 3.)

The Department of the Interior is responsible for coordinating federal archeological programs, approving states' archeological plans, and administering a historic preservation grants program. Interior is also responsible for establishing criteria to determine if archeological sites should be included in the National Register of Historic Places, which lists historic properties important to our country's heritage. (See pp. 3 and 4.)

EARLIER GAO REPORT CITED PROBLEMS  
IN AGENCIES' PRESERVATION EFFORTS

GAO reported<sup>1</sup> in April 1981 that various federal agencies' archeological preservation efforts, which were costing about \$100 million annually, had been characterized by disorder, confusion, and controversy because Interior had not provided strong guidance and leadership. GAO stated that better guidance was needed because some federal agencies could spend billions of dollars over the next 10 to 30 years for archeological surveys, many of

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<sup>1</sup>Are Agencies Doing Enough or Too Much for  
Archeological Preservation? Guidance Needed  
(Apr. 22, 1981, CED-81-61).

which may not be necessary, while other agencies may not do enough to identify and protect archeological sites.

GAO made 16 recommendations to Interior and other federal agencies to remedy these problems. The recommendations covered three broad areas: (1) archeological resource identification, (2) the states' role in determining archeological site significance, and (3) the extent of data recovery.<sup>2</sup> (See pp. 7 to 10.)

This report on the federal agencies' progress in implementing GAO's recommendations was requested by the Chairman, House Committee on Interior and Insular Affairs. GAO also agreed to summarize the status of (1) federal agencies' implementation of the 1980 amendments and (2) Interior's approval of state historic preservation plans. (See p. 1.)

GAO found that, as of February 1984, Interior, the Advisory Council on Historic Preservation,<sup>3</sup> and other federal agencies had taken actions to respond to 9 of the 16 recommendations in GAO's April 1981 report and Interior and the Advisory Council had taken actions to comply with 35 of the 54 requirements of the 1980 amendments. In some cases, implementation of the recommendations and requirements had been suspended because of a dispute over the legality of Council regulations. Because many of the actions that were taken were just being implemented and much of the supporting documentation was in draft form subject to revision, GAO did not evaluate the effectiveness of the actions.

On the status of Interior's approval of state plans, GAO found that Interior is requiring all states to implement comprehensive historic preservation planning in accordance with Interior's standards as a condition for

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<sup>2</sup>The scientific retrieval, analysis, and preservation of archeological and historical materials and information that would otherwise be lost, and the study of these resources in their original context.

<sup>3</sup>An independent agency within the executive branch that advises the President and the Congress on historic preservation matters.

receiving preservation grants. As of February 1984, 24 states, the District of Columbia, and Puerto Rico were using or in the process of implementing Interior's suggested model planning approach.

DISPUTE OVER AUTHORITY OF ADVISORY  
COUNCIL ON HISTORIC PRESERVATION HAS  
CAUSED SOME ACTIONS TO BE SUSPENDED

Interior, the Advisory Council, and other agencies have been working to respond to GAO's recommendations and to satisfy the requirements of the 1980 amendments. Action on some recommendations and requirements, however, had been suspended because of a dispute between the Office of Management and Budget (OMB) (and other federal agencies) and the Advisory Council on the legality of Council regulations.

According to section 106 of the National Historic Preservation Act, as amended, federal agencies are required to take into account the effects of their undertakings on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. In addition, the Council is to be given a reasonable opportunity to comment on any proposed federal or federally assisted undertaking before an agency approves spending any federal funds or issues any license for these undertakings.

The Council is also authorized to promulgate such rules and regulations as it deems necessary to govern section 106's implementation. The Council's regulations, issued in 1979, spell out the process by which a federal agency head is to take the effects of a proposed undertaking into account and afford the Council an opportunity to comment. In 1982, the Council proposed revisions to the regulations in response to the President's regulatory reform program.

OMB's and Interior's position

OMB, which is responsible under the regulatory reform program for review and clearance of federal regulations, and Interior took the position that the Council's existing and proposed regulations exceeded its statutory authority. OMB and Interior contended that the regulations were so demanding that federal agencies were compelled to acquiesce to

Council recommendations in order to avoid project delays. They believed this amounted to regulatory control of federal agency program activities, a role not authorized by the Congress.

#### The Council's position

The Council disagreed. It maintained that the regulations were not burdensome and that the act authorized the Council to promulgate rules and regulations specifying mechanisms for taking project effects into account, as well as ensuring that it received the basic information it needed for commenting responsibly. It denied, however, that it had or sought the ability to pressure agencies into following its recommendations.

#### Ramifications and status of the dispute

This dispute, which began in April 1982, resulted in some federal agencies' delaying or suspending actions implementing national preservation program guidelines. Because of the stalemate, OMB asked the Department of Justice in April 1983 to review written opinions of both OMB and the Council and determine if the Council's existing and proposed regulations were lawful.

In October 1983, Justice's Office of Legal Counsel rendered an opinion favoring OMB's and Interior's position. In December 1983, the Council and Interior revised the Council's draft regulations to meet the Office of Legal Counsel's legal concerns. The Office decided that the revised draft was within the Council's authority, provided certain clarifications were made. As of February 1984, the Council was reviewing the draft regulations to develop the clarifications needed to resolve the dispute. (See pp. 5 and 6 and app. I.)

#### STATUS OF IMPLEMENTATION OF GAO RECOMMENDATIONS

GAO's review of agencies' actions on the 16 recommendations in GAO's April 1981 report showed that as of February 13, 1984, actions had been taken or were in process on 9 recommendations, were suspended on 5 recommendations, and had not been taken on the other 2. (See pp. 6 to 10.) As stated earlier, GAO did



not evaluate the effectiveness of the actions that had been taken or were in process.

Recommendations acted on

The actions that had been taken or were in process included (1) using existing statutory authority to make Historic Preservation Fund grants available to states on a 70 percent (federal) to 30 percent (state) matching basis for state preservation plan development, (2) requiring each state to make tangible and measurable progress toward a comprehensive state archeological and historic preservation planning system, and (3) developing preservation standards and guidelines to be used at federal, state, and local levels.

Recommendations on which action was suspended

Because of the dispute between OMB/Interior and the Council, action was suspended on recommendations that

- the Department of Agriculture's Forest Service improve its program for identifying archeological resources by (1) making archeological surveys before land-altering projects and (2) monitoring projects to assure archeological site protection;
- the Council require federal agencies to (1) define specific significant research questions to be addressed in data recovery and (2) relate data recovery to priorities defined in approved state preservation plans; and
- the Department of Housing and Urban Development (HUD), Interior, and the Council, together or separately, seek an Attorney General's opinion on HUD's role in the archeological survey process.

Recommendations not acted on

Because of confusion and disagreement among federal agencies on what should be done to locate and identify historic and archeological resources on federal lands and in areas affected by federal projects, GAO recommended in 1981 that Interior seek an amendment clarifying its rulemaking authority under the 1974 Archeological and Historic Preservation Act.

Interior officials believed the 1980 amendments clarified Interior's authority. However, the amendments did not alter the provisions in question. Because Interior cannot be sure its authority will not be questioned in the future, GAO continues to believe that amending the 1974 act would provide a more final and effective disposition of the matter.

GAO recommended that Interior promulgate regulations on federal data recovery efforts and reporting systems to, among other things, define the extent to which agencies are required to retrieve, analyze, and preserve archeological and historic materials and information and to identify who should pay for such work. Interior officials expected to begin work on these regulations in fiscal year 1984.

For a detailed discussion of actions taken on GAO's 16 recommendations, see appendix II.

#### STATUS OF IMPLEMENTATION OF 1980 AMENDMENTS

In analyzing the 1980 amendments, GAO identified 54 requirements for some kind of action by either Interior or the Council. These requirements dealt with (1) promulgating regulations and standards governing the designation and documentation of historic properties at various governmental levels, (2) providing guidance to, and participating in, local, state, federal, and international historic preservation programs, (3) administering grant programs, (4) establishing and maintaining an insured loan program, and (5) carrying out educational, promotional, and reporting duties.

GAO's review of Interior's and the Council's responses to the 54 requirements as of February 13, 1984, showed that actions either had been taken or were in process on 35 requirements and that actions had not been taken or were suspended on 19 requirements. (See pp. 10 to 12.)

Requirements on which actions had been taken or were in process related mainly to historic property designation and documentation; state, federal, and international programs; and grant programs. For example, Interior had

revised and published criteria for National Register designation; published proposed regulations on approving state historic preservation programs; and developed and implemented a state program review process.

Also, the Council published guidelines for exempting federal programs or undertakings from the act's requirements when such exemption is consistent with the act's purposes; carried out various training activities; and submitted to the President and the Congress a report on federal tax laws relating to historic preservation.

Requirements on which actions had not been taken or had been suspended related mainly to insured loans and to promotional duties. For example, (1) Interior had focused its attention on effective use of the Historic Preservation Federal Tax Incentives Program, rather than insuring loans made by private lenders, to help finance preservation projects, (2) instead of establishing its own awards program to recognize preservation contributions by federal, state, and local government officers and employees, Interior stimulated the development of awards by others, and (3) the Council had not evaluated the effectiveness of federal agencies' and others' programs in carrying out the act's purposes and did not expect to do so until more funds or staff time became available.

Appendix III lists the 54 requirements and has a summary of the status of actions on them.

#### STATUS OF INTERIOR'S APPROVAL OF STATE HISTORIC PRESERVATION PLANS

Interior has developed a model, step-by-step approach--called the Resource Protection Planning Process (RP3)--for carrying out preservation planning. The model approach is intended to ensure that the key preservation elements of identification, evaluation, and protection are fully considered in the land use decisionmaking process. Since 1980, Interior has encouraged state historic preservation offices and other planning agencies to adopt the RP3 model approach. According to Interior officials, as of February 13, 1984, 24 states, the District of Columbia, and Puerto Rico were using or in the process of

implementing the RP3 model approach. To stimulate state action, Interior is requiring, as a condition for receiving federal preservation grants, that states implement comprehensive historic preservation planning in accordance with Interior's standards.

#### AGENCIES' COMMENTS AND GAO'S EVALUATION

Officials of Interior, the Council, Agriculture, and HUD provided oral comments on a draft of this report. The officials generally agreed with GAO's summarization of the status of actions or provided updated information.

Concerning the dispute over the Council's authority, the Interior officials said that because Justice issued its opinion in October 1983 on the Council's rulemaking authority, the dispute had been settled, and GAO's report should reflect this. As of February 13, 1984, however, the Council had not completed developing the clarifications to its regulations as required by Justice in December 1983, and other agencies were still suspending various actions pending receipt of OMB-approved revised Council regulations. (See p. 14.)

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# ABBREVIATIONS

ACHP	Advisory Council on Historic Preservation
BIA	Bureau of Indian Affairs
BLM	Bureau of Land Management
GAO	General Accounting Office
HCRS	Heritage Conservation and Recreation Service
HUD	Department of Housing and Urban Development
NPS	National Park Service
OMB	Office of Management and Budget
RP3	Resource Protection Planning Process
SHPO	State Historic Preservation Office

## CHAPTER 1

### INTRODUCTION

The Congress, in recognizing that archeological sites are a vital part of our cultural heritage and that their destruction irreversibly diminishes our knowledge of the past, has enacted several laws over the years making federal agencies responsible and accountable for any potential impact their actions may have on archeological, cultural, and historic resources.

On April 22, 1981, we issued a report entitled Are Agencies Doing Enough or Too Much for Archeological Preservation? Guidance Needed (CED-81-61). Our report stated that various agencies' archeological preservation efforts, which were costing about \$100 million annually, had been characterized by disorder, confusion, and controversy because the Department of the Interior, which is responsible for guiding and coordinating historic and archeological preservation activities, had not provided strong guidance and leadership. We stated that Interior had not established good criteria for agencies to determine whether identified historic/archeological sites were important to the national heritage nor had it provided guidance on the extent to which archeological resources must be recovered, recorded, or preserved to comply with federal laws and regulations.

We stated that the absence of adequate criteria and guidance had resulted in project delays, increased costs, and general confusion over what was required to identify sites, determine their significance, and protect their resources. We also stated that better guidance was needed because some federal agencies could spend billions of dollars over the next 10 to 30 years for archeological surveys, many of which may not be necessary, while other agencies may not do enough to identify and protect archeological sites. We made a total of 16 recommendations to remedy these problems to the following agency heads: the Secretary of the Interior; the Advisory Council on Historic Preservation (ACHP);<sup>1</sup> the Secretary of Agriculture; and the Secretary of Housing and Urban Development (HUD).

The Chairman, House Committee on Interior and Insular Affairs, asked us to follow up on our 1981 report and provide information on the status of federal agency actions to implement our recommendations. Subsequently, we also agreed to summarize

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<sup>1</sup>An independent agency within the executive branch that advises the President and the Congress on historic preservation matters. It has 19 members, 7 of whom represent the federal sector whose activities affect historical and cultural properties. The seven federal members are the Secretaries of the Interior, Agriculture, the Treasury, Transportation, and HUD; the Architect of the Capitol; and the Administrator of General Services.

the status of federal agencies' implementation of the National Historic Preservation Act Amendments of 1980 and the status of Interior's approval of state historic preservation plans.

#### MAJOR LEGISLATION AFFECTING ARCHEOLOGICAL RESOURCES

The federal role in preserving archeological and cultural resources began with the passage of the act of June 8, 1906 (Public Law 59-209, Antiquities Act), which provides for the protection of all antiquities and monuments on federal lands. The legal base for this protection was considerably strengthened by the Archeological Resources Protection Act of 1979 (Public Law 96-95).

The act of August 21, 1935 (Public Law 74-292, Historic Sites Act) established a policy of preserving historic resources of national significance for public use and inspiration. The act gives the Secretary of the Interior the authority to survey, document, evaluate, acquire, and preserve archeological and historical sites, buildings, and objects throughout the country.

The act of June 27, 1960 (Public Law 86-523, Reservoir Salvage Act) gives the Secretary of the Interior major responsibilities for preserving archeological data that might be lost through federal or federally licensed dam construction. The National Historic Preservation Act of 1966 (Public Law 89-665) established the Advisory Council on Historic Preservation; authorizes the Secretary of the Interior to expand and maintain a National Register of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, and culture; and authorizes partial federal funding for states' historic preservation offices. In addition, section 106 of the act requires federal agencies to take into account the effect of their projects on any district, site, building, structure, or object that is included in "or eligible for inclusion in"<sup>2</sup> the National Register and to provide ACHP a reasonable opportunity to comment on the undertaking.

The act of May 24, 1974 (Public Law 93-291, Archeological and Historic Preservation Act), was a major piece of legislation. The act significantly expanded the scope of the 1960 Reservoir Salvage Act by requiring preservation of significant historical and archeological data affected as a result of any federal or federally related land modification activity. The act also makes the Secretary of the Interior responsible for coordinating and administering a nationwide program for recovering, protecting, and preserving scientific, prehistoric, historic, and archeological data which would otherwise be damaged or destroyed through federal action. This act, referred to as the Moss-Bennett Act, for the first time authorized an

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<sup>2</sup>The phrase "or eligible for inclusion in" was added by Public Law 94-422, Sept. 28, 1976.



agency responsible for a construction project to expend up to 1 percent of the project's cost for an archeological survey and recovery of data at sites affected by the project.

In addition to being guided by the above laws, federal agencies must consider the National Environmental Policy Act of 1969 (Public Law 91-190), which requires them to assess the environmental aspects of major federal actions significantly affecting the human environment, including their effect on cultural resources. Also, Executive Order 11593, dated May 13, 1971, sets forth the federal agencies' responsibilities to record, preserve, and maintain archeological, historical, or cultural resources.

The National Historic Preservation Act Amendments of 1980 (Public Law 96-515, Dec. 12, 1980) clarified the responsibilities of the Secretary of the Interior, ACHP, and the heads of federal agencies to provide better guidance for the national historic preservation program at the federal, state, and local levels. The amendments both reinforce and expand the Secretary's duties to include (1) the promulgation of regulations and standards governing the designation and documentation of historic properties at various governmental levels, (2) guidance and participation in local, state, federal, and international historic preservation programs, (3) grants administration, (4) establishment and maintenance of a loan guarantee program, and (5) various educational, promotional, and reporting duties.

#### RESPONSIBILITIES OF ORGANIZATIONS CHARGED WITH PRESERVATION

Except for the period from January 1978 through February 1981, Interior's National Park Service (NPS) has been the federal focal point for the program of identifying and preserving archeological and historical sites. In January 1978, the Secretary transferred most of these responsibilities to Interior's newly created Heritage Conservation and Recreation Service (HCRS). But on February 19, 1981, Secretary's Order 3060 abolished HCRS as a separate entity of Interior and transferred HCRS' major functions back to NPS. NPS is under the supervision of Interior's Assistant Secretary for Fish and Wildlife and Parks.

NPS, with the cooperation and assistance of other federal agencies, states, and the private sector, coordinates a nationwide effort to protect significant archeological and historical artifacts threatened by federally sponsored or assisted projects. It administers a Historic Preservation Fund grants program to preserve the historical, architectural, archeological, and cultural properties of the United States. NPS maintains the National Register of Historic Places, a major planning tool with respect to historic properties in the nation that are significant enough to require the federal government's attention.

Federal law stipulates that when a federal agency's undertaking affects a significant resource in or eligible to be

included in the National Register, ACHP must be given an opportunity to comment on the proposed project. ACHP is also responsible for advising the President and the Congress on historic preservation matters.

Each state and territory has a historic preservation officer who plays a key role in the program. The preservation officer uses historic preservation grant funds to (1) make comprehensive statewide historic surveys, (2) prepare preservation plans, and (3) preserve specific properties. To comply with the statutes, federal agencies must consult and involve the states' historic preservation officers when identifying and developing plans to protect significant properties.

Federal agencies are required by law and executive order to consider the effect their actions will have on historic and archeological properties and to take the necessary measures to identify, preserve, and protect them.

#### OBJECTIVES, SCOPE, AND METHODOLOGY

We made this review to determine the progress that Interior and other federal agencies had made to improve the national archeological and historic preservation program. In accordance with arrangements made with the committee, we limited our work to following up on our prior recommendations, determining the progress Interior and ACHP had made to implement the requirements of the National Historic Preservation Act Amendments of 1980, and obtaining information on the status of Interior's approval of states' historic preservation plans. For purposes of this report, we generally use February 13, 1984, as the cutoff date for summarizing actions, progress, and status. We made the review primarily between May and December 1983 and obtained supplemental information in January and February 1984.

We interviewed federal officials and reviewed records and correspondence at the Washington, D.C., headquarters offices of Interior, including NPS; the Departments of Agriculture and HUD; and ACHP. We also talked with Department of Justice officials and had a consultant, Dr. Charles R. McGimsey III, Director, Arkansas Archeological Survey, University of Arkansas, review a draft of this report.

Where agencies' actions had resulted in the development of criteria, regulations, guidelines, reports, or similar documentation, we asked for and received such documentation. However, because many of the actions were just being implemented and much of the supporting documentation was in draft form subject to revision, we did not evaluate their effectiveness. Except for not doing an effectiveness evaluation as noted above, we made our review in accordance with generally accepted government auditing standards.

## CHAPTER 2

### PROGRESS TO IMPROVE THE ADMINISTRATION OF THE NATIONAL

#### ARCHEOLOGICAL AND HISTORIC PRESERVATION PROGRAM

As of February 13, 1984, Interior, ACHP, and other federal agencies had taken action on or were working to respond to 9 of the 16 recommendations in our April 1981 report and to satisfy 35 of the 54 requirements of the National Historic Preservation Act Amendments of 1980. However, action on some recommendations and requirements had been suspended because of a dispute over ACHP's role in historic preservation.

In addition, since 1980, Interior has assisted 26 state historic preservation offices (SHPOs) and other planning agencies to integrate the identification, evaluation, and protection elements of preservation into their land use decisionmaking processes.

#### DISPUTE OVER ACHP'S STATUTORY AUTHORITY

The dispute over ACHP's role in historic preservation concerns ACHP's regulations implementing section 106 of the National Historic Preservation Act. According to section 106, originally enacted in 1966, ACHP is to have a reasonable opportunity to comment on any proposed federal, or federally assisted or licensed, undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register before an agency approves any federal funds or issues any license. Under the 1976 amendments to the act, ACHP is authorized by section 211 to promulgate such rules and regulations as it deems necessary to govern the implementation of section 106. These regulations, issued on January 30, 1979, as 36 CFR 800, spell out the process by which the head of a federal agency is to take effects into account and afford ACHP an opportunity to comment. In 1982, ACHP proposed revisions to the regulations in response to the President's regulatory reform program.

#### Office of Management and Budget's and Interior Department's position

The Office of Management and Budget (OMB), which is responsible under the regulatory reform program for review and clearance of federal regulations, and Interior took the position that ACHP's existing and proposed regulations exceeded ACHP's statutory authority in that the regulations were so cumbersome and demanding that federal agencies were compelled to acquiesce to ACHP recommendations in order to avoid project delays. OMB and Interior contended that this amounted to regulatory control of federal agency program activities, a role not authorized by the Congress.

#### ACHP's position

ACHP disagreed with OMB's and Interior's assertions. It maintained that the regulations were not burdensome and believed

that section 211 authorized the Council both to specify the basic information it needed to comment responsibly and to establish ways for agencies to take into account the effects of their actions. It denied that it had or sought the ability to pressure agencies into following its recommendations. ACHP said that its interpretation had been sustained on direct challenge in the courts<sup>1</sup> and had been endorsed by the Congress when the National Historic Preservation Act was amended in 1976 and 1980.

#### Effects of the stalemate

Because of the stalemate, OMB asked the Department of Justice's Office of Legal Counsel in April 1983 to review written opinions of both OMB and ACHP and determine if ACHP's existing and proposed section 106 regulations were lawful.

This dispute, which began in April 1982, resulted in much controversy and caused some federal agencies to delay or suspend actions to implement guidelines pertaining to the National Archeological and Historic Preservation Program. For example, HUD had not sought the opinion of the Attorney General concerning its archeological survey responsibilities, the Forest Service had not issued monitoring requirements on project actions, and ACHP had suspended plans to promote focused research to include consultation with the academic community to establish significant research topics of national scope. According to these agencies, such actions were suspended until the Department of Justice ruled on ACHP's statutory authority and OMB and ACHP agreed on revisions to ACHP's regulations. (See app. II, pp. 25 to 29.)

On October 28, 1983, Justice's Office of Legal Counsel rendered an opinion that favored OMB's and Interior's position. On December 2, 1983, ACHP and Interior developed another revised draft of ACHP regulations to meet the Office of Legal Counsel's legal concerns. On December 12, 1983, the Office of Legal Counsel found the revised draft to be within ACHP's authority, provided certain clarifications were made. As of February 13, 1984, ACHP was reviewing its December 1983 draft regulations to develop the clarifications needed to resolve the dispute. Appendix I contains a chronology of the dispute over ACHP's statutory authority.

#### STATUS OF AGENCY ACTIONS ON RECOMMENDATIONS IN OUR APRIL 1981 REPORT

As of February 13, 1984, Interior, ACHP, and the Department of Agriculture's Forest Service had taken or were in the process of taking action on 9 of the 16 recommendations in our April 1981 report, as the following table shows:

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<sup>1</sup>National Center for Preservation Law v. Landrieu (496 F. Supp. 716 (D.S.C. 1980), aff'd 635 F. 2d 324 (4th Cir. 1980)) and National Indian Youth Council v. Andrus (623 F. 2d 694 (10th Cir. 1980)).

<u>Agency</u>	<u>Number of recommen- dations</u>	<u>Status as of February 13, 1984</u>			
		<u>Action taken</u>	<u>Action in process</u>	<u>No action taken</u>	<u>Action suspended</u>
Department of the Interior	9	3	4	2	-
Advisory Council on Historic Preservation	3	1	-	-	2
Department of Agriculture	3	-	1	-	2
Department of Housing and Urban Development, Department of the Interior, and the Advisory Council on Historic Pres- ervation	<u>1</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>1</u>
Total	<u>16</u>	<u>4</u>	<u>5</u>	<u>2</u>	<u>5</u>

The 16 recommendations were directed toward correcting problems in three broad areas: (1) archeological resource identification, (2) the states' role in determining archeological site significance, and (3) the extent of data recovery.<sup>2</sup> The status of agency actions on the recommendations in each of these areas is summarized below. More detailed information on each of the recommendations is in appendix II.

#### Archeological resource identification

We concluded in our previous report that disagreement among federal agencies over Interior's rulemaking authority hampered the archeological resource identification process. We also concluded that if Interior coordinated states' and federal agencies' joint archeological overviews better, substantial savings could take place by avoiding overlapping studies. To improve the archeological resource identification process, we made eight recommendations: four to Interior; one to Interior, HUD, and ACHP; and three to Agriculture. Our follow-up disclosed that action was taken or in process on four of the recommendations and that action had not been initiated or was suspended on the other four.

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<sup>2</sup>The scientific retrieval, analysis, and preservation of archeological and historical materials and information that would otherwise be lost, and the study of these resources in their original context.

Action taken or in process by Interior included (1) preparing standards and associated guidance explaining how federal agencies are to conduct surveys and investigations to locate and identify archeological properties, (2) developing guidelines for implementing section 110 of the National Historic Preservation Act, as amended, which includes a program for locating federal properties that appear to qualify for inclusion on the National Register, and (3) initiating various activities, such as developing a comprehensive computerized archeological and cultural resource data base, that could be used to improve coordination of federal and state archeological overview activities. The Forest Service had action in process for increasing the effectiveness and efficiency of its archeological inventory process.

On three recommendations, action had been suspended because of the legal question about ACHP's statutory authority. Two of these actions involved the Forest Service's revisions of its manual on cultural resource management and development of guidelines on monitoring and reporting to verify that significant archeological sites are protected.

Action had not been taken on the recommendation calling for Interior to seek an amendment to the May 1974 Archeological and Historic Preservation Act to clarify Interior's rulemaking authority to coordinate and publish regulations that are binding on other federal agency programs. We viewed this clarification as a vital step toward alleviating the confusion and disagreement that existed among federal agencies on what should be done to locate and identify historic and archeological resources on federal lands and in areas affected by federal projects.

Interior's rationale for not seeking an amendment is based on its belief that the National Historic Preservation Act Amendments of 1980 give the Secretary of the Interior sufficient additional authority for promulgating standards and guidelines to assist federal agencies in carrying out their archeological and historic preservation responsibilities. Although the 1980 amendments authorize the Secretary to issue guidelines for federal agency responsibilities under the new section 110 of the act,<sup>3</sup> they do not deal with the Secretary's rulemaking authority that was questioned by other federal agencies under the 1974 Archeological and Historic Preservation Act.

After the 1974 act was passed, Interior issued draft regulations, that have yet to be finalized, setting forth detailed procedures on how federal agencies are to conduct surveys and investigations to locate and identify archeological properties. Interior claimed, but other federal agencies disputed, that section 5(c) of the Archeological and Historic Preservation Act, 16 U.S.C. 469a-3 (1976), and section 2 of the 1935 Historic Sites Act, 16 U.S.C. 462(k) (1976), provide Interior the authority to

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<sup>3</sup>Section 110 of the act spells out federal agency responsibility for the preservation of historic properties.

promulgate such rules and regulations. Neither of these provisions was amended or altered by the 1980 amendments.

Interior said that it plans to propose revisions during fiscal year 1984 to the existing draft regulations under the 1974 Archeological and Historic Preservation Act, as amended, which will not deal with the technical or "how to" aspects of archeology but will be directed at establishing procedures for carrying out Interior's responsibility for various requirements. Interior said that it believed that because the regulations will be procedural rather than technical, they will fall within the Secretary's authority. What these procedural regulations are going to say and how agencies will interpret and respond to them is not known, and because of this, Interior cannot be sure its authority will not be questioned in the future. Therefore, we continue to believe that amending the 1974 act would appear to be a more final and effective disposition of the questions concerning Interior's rulemaking authority.

#### The states' role in determining archeological site significance

In our previous report, we concluded that states generally did not have usable historic preservation plans and, therefore, could not help federal agencies determine whether federal undertakings affect significant archeological properties. To improve this situation, we made four recommendations to Interior to encourage SHPOs to play a greater role in determining which archeological properties have state and local significance and are eligible for the National Register. These recommendations related to funding of state preservation plans; requiring submission of adequate plans; issuing guidelines for developing state archeological data management capabilities, making state archeological surveys, and determining state and local site significance; and making SHPOs the focal point for determining whether archeological resources are significant enough to list on the National Register.

As discussed in appendix II, our follow-up showed that Interior either had taken action or had action in process on the four recommendations.

#### Extent of data recovery

We concluded in our previous report that implementing an effective archeological data recovery program had been hampered by the lack of information on program costs and accomplishments to know whether the nationwide archeological program was worth the cost. Furthermore, we found no agreement on how much data recovery is enough. To improve data recovery requirements, we made four recommendations, one to Interior and three to ACHP.

Interior has not yet taken action to promulgate regulations on federal data recovery efforts and reporting systems to include (1) the specific circumstances and extent to which agencies are required to excavate sites outside a project's direct impact area,

(2) who should pay for archeological work, and (3) the development of agency reporting systems for providing information on program costs and accomplishments so that program effectiveness could be monitored and reported to the Congress. According to Interior officials, new draft regulations will be prepared, which will differ significantly from those draft regulations published in 1977 as 36 CFR 66, because of the new requirements of the 1980 amendments. Interior officials said that they expect to begin work on these regulations and publish them in draft in fiscal year 1984.

The three recommendations to ACHP were that, in its review of agency proposals relating to archeological resources, it require federal agencies to (1) define specific research questions to be addressed in data recovery, (2) relate data recovery to state-defined priorities, and (3) establish peer review panels on large and controversial projects to help determine how much archeological excavation is necessary and to monitor contractor progress and performance. On the two recommendations dealing with research questions and data recovery priorities, ACHP responded that it could not mandate such requirements but that, through its handbook and manual, it had encouraged action on these matters. However, ACHP's efforts to promote focused research on significant research topics of national scope and its efforts to provide for more extensive use of state plans, through its draft regulations of October 1982, were suspended pending resolution of the legal dispute surrounding ACHP's statutory authority. On the third recommendation, ACHP said that it encourages peer review panels where appropriate.

STATUS OF INTERIOR'S AND ACHP'S  
ACTIONS IN RESPONSE TO PROVISIONS  
OF THE NATIONAL HISTORIC PRESERVATION  
ACT AMENDMENTS OF 1980

The National Historic Preservation Act Amendments of 1980 contain 54 requirements for some kind of action by Interior or ACHP, either alone, jointly, and/or in cooperation or consultation with other agencies. These requirements fall into such categories as (1) promulgating regulations and standards governing the designation and documentation of historic properties at various governmental levels, (2) providing guidance to and participating in, local, state, federal, and international historic preservation programs, (3) administering grant programs, (4) establishing and maintaining an insured loan program, and (5) carrying out educational, promotional, and reporting duties.

Our review of Interior's and ACHP's responses to the 54 requirements as of February 13, 1984, showed that actions either had been taken or were in process on 35 requirements and that actions had not been taken or were suspended on 19 requirements. The following table summarizes this information:



<u>Agency</u>	<u>Number of require- ments</u>	<u>Status as of February 13, 1984</u>			
		<u>Action taken</u>	<u>Action in process</u>	<u>No action taken</u>	<u>Action suspended</u>
Department of the Interior	48	19	13	14	2
Advisory Council on Historic Preservation	<u>6</u>	<u>3</u>	<u>-</u>	<u>1</u>	<u>2</u>
Total	<u>54</u>	<u>22</u>	<u>13</u>	<u>15</u>	<u>4</u>

The bulk of the actions taken or in process had occurred in the categories of designating and documenting historic properties; providing guidance to and participating in local, state, federal, and international historic preservation programs; and administering grant programs. For example, actions taken by Interior included revising and publishing criteria for National Historic Landmark designations; publishing regulations for designating properties as National Historic Landmarks and for removing such designations; finalizing and publishing regulations for nominating historic properties for inclusion in the World Heritage List; developing and publishing the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation; and administering programs providing grants to states and to the National Trust for Historic Preservation.

ACHP published guidelines for exempting federal programs or undertakings from the act's requirements when such exemption is consistent with the act's purposes; carried out various training activities; and prepared, adopted, and submitted to the President and the Congress a report on federal tax laws relating to historic preservation.

Interior's actions in process included proposed regulations for nominating properties for inclusion in and removal from the National Register; consolidating into the National Register nomination and listing procedures the revision of the procedures for determining eligibility of properties for inclusion in the National Register; finalizing regulations on approving state historic preservation programs; developing and implementing a state program review process; and drafting guidelines for the heads of federal agencies who must assume responsibility for preserving historic properties owned or controlled by their agencies.

The bulk of actions not taken fell in the categories of (1) insured loans and (2) educational, promotional, and reporting duties. For example, Interior had not established either a loan insurance program or an awards program. Instead, it relied on the use of the Historic Preservation Federal Tax Incentives Program in place of the loan program to help finance preservation projects; and it stimulated development of awards programs managed by others for recognizing outstanding contributions to the preservation of

historic resources by officers and employees of federal, state, and certified local governments. Also, ACHP had not evaluated the effectiveness of federal agencies' and others' programs in carrying out the act's purposes and did not expect to undertake detailed evaluations until more funds were available or until staff time was freed up by a decrease in some other operating area.

A summary of the status of actions on the 54 requirements can be found in appendix III.

STATUS OF INTERIOR'S APPROVAL  
OF STATE HISTORIC PRESERVATION PLANS

The 1966 National Historic Preservation Act greatly expanded the National Register to include properties with state and local significance which federal agencies are required to identify and consider in planning for preservation. In addition, the act created a program of matching grants to states for historic preservation purposes, provided a state had prepared a preservation plan in accordance with Interior standards and had its approval.

During the first 8 years of the National Historic Preservation Program, Interior required states to submit preservation plans, but it abandoned the process after receiving plans of poor quality. In 1977, Interior began another effort to establish adequate state preservation plan criteria, but these efforts also proved unsatisfactory and were abandoned.

Subsequently, an Interior task force developed a revised process for preservation planning and pilot tested it in two states in 1980. Since 1980, Interior, through its Resource

Protection Planning Process (RP3)<sup>4</sup> model approach, has attempted to assist SHPOs and other planning agencies<sup>5</sup> to integrate the identification, evaluation, and protection elements of preservation into their land use decisionmaking processes.

Interior is now using historic preservation grants as an incentive to get states to implement a comprehensive state historic preservation planning process (1) pursuant to section 101(b)(3)(C) of the National Historic Preservation Act, as amended and (2) in accordance with the Secretary's Technical Standards for Comprehensive Historic Preservation Planning and other existing preservation planning guidance issued by the National Park Service. That is, as a condition of the states' fiscal year 1983 preservation grants, all states were required to implement comprehensive historic preservation planning in accordance with Interior's preservation planning standards. The status of the states' progress in implementing a historic preservation planning process is as follows.

As of February 13, 1984, the six following states were beyond the implementation phase of RP3 and were involved in the subsequent cycles of ongoing maintenance of the plan and use in program operations:

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<sup>4</sup>RP3 is the Department of the Interior's model approach and process for SHPOs and other planning agencies to integrate the identification, evaluation, and protection elements of preservation programs to ensure that preservation concerns are fully considered in land use decisionmaking. The model recommends the following strategy:

1. Divide the state or planning area into appropriate resource study units and define eligible important resources.
2. Identify ideal or preferred conservation, reuse, research, and interpretation objectives for the historic resources included in the study unit.
3. Assess the achievability of the ideal objectives.
4. Prepare an operational plan for resources included in the study unit which identifies achievable objectives, priorities, and strategies for use in land use planning.
5. Cycle new information back into the first step.

<sup>5</sup>Includes any agency at the federal, state, or local level that has responsibilities for protecting cultural resources and for preservation planning.

Colorado  
Indiana  
Kentucky  
Massachusetts  
Ohio  
Texas

The five following states had made substantial progress toward completing the implementation phase of RP3:

Arkansas  
Illinois  
Iowa  
Maryland  
Wyoming

The 13 following states, the District of Columbia, and Puerto Rico had begun the implementation phase of RP3:

Connecticut	Oklahoma
Georgia	Pennsylvania
Kansas	Rhode Island
Louisiana	South Dakota
Missouri	Washington
New Jersey	Wisconsin
North Carolina	

From the states' experiences, Interior modified its RP3 approach and finalized and issued preservation performance planning standards on September 29, 1983, that can be used by all states where preservation planning is to be used.

#### AGENCIES' COMMENTS AND OUR EVALUATION

Officials of Interior, ACHP, Agriculture, and HUD provided oral comments on a draft of this report. The officials generally agreed with our summarization of the status of the agencies' actions or provided information to update the status.

On the matter of the dispute over ACHP's authority, the Interior officials said that because Justice issued its opinion in October 1983 on ACHP's rulemaking authority, the dispute had been settled, and our report should reflect this. As of February 13, 1984, however, ACHP had not completed developing the clarifications to its regulations as required by Justice in December 1983, and other agencies were still suspending various actions pending receipt of OMB-approved revised ACHP regulations.

CHRONOLOGY OF THE DISPUTE SURROUNDINGACHP'S STATUTORY AUTHORITY

Sept. 28, 1976	An amendment adding section 211 to the National Historic Preservation Act authorizes the Advisory Council on Historic Preservation (ACHP) to promulgate such rules and regulations as it deems necessary to implement section 106 of the act, which requires federal agencies, having direct or indirect jurisdiction over a proposed federal or federally assisted or licensed undertaking, to afford ACHP a reasonable opportunity to comment on the effect of such undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register.
Jan. 30, 1979	Pursuant to section 211, ACHP promulgates section 106 regulations as 36 CFR Part 800.
Feb. 17, 1981	Under Executive Order 12291, the present administration establishes its regulatory reform program which is to be administered by the Office of Management and Budget (OMB) subject to the overall direction of the Presidential Task Force on Regulatory Relief, which is headed by the Vice-President.
Feb. 27, 1981	In conjunction with and support of the presidential initiative on regulatory reform, ACHP initiates a review of its section 106 regulations.
Mar. 8, 1982	ACHP submits proposed revised regulations to OMB for review and clearance.
Apr. 7, 1982	ACHP's proposed revised regulations are rejected as inadequate by OMB's Administrator for Information and Regulatory Affairs.
Apr. 13, 1982	OMB asks Interior to lead an interagency task force to review the various laws and regulations concerned with historic and archeological preservation with the goal of improving the implementation of historic and archeological preservation requirements by recommending ways to minimize regulatory burdens and eliminate wasteful administrative practices.

## APPENDIX I

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Aug. 4, 1982	ACHP's section 106 activities are included in the Vice-President's expanded list of programs targeted for regulatory reform.
Oct. 26, 1982	ACHP submits a revised draft of its section 106 regulations to OMB for clearance.
Nov. 3, 1982	An Interior letter to OMB describes ACHP's revised regulations as giving ACHP decision-making leverage over federal agencies. Interior asks OMB to reject ACHP's regulations as unacceptable, and instead consider Interior's proposed section 106 regulations as an acceptable alternative.
Nov. 8, 1982	An ACHP letter to OMB responds to Interior's November 3, 1982, letter and analysis of ACHP's revised regulations.
Dec. 14, 1982	Interior transmits to OMB phase one of the interagency historic preservation review. It consists of a proposed presidential memorandum to define and clarify the roles and responsibilities the federal agencies will have in the federal historic preservation program.
Feb. 15, 1983	ACHP receives from OMB's General Counsel a draft legal opinion on OMB's legal concerns about ACHP's revised section 106 regulations.
Apr. 8, 1983	OMB's General Counsel sends a letter to the Justice Department's Office of Legal Counsel asking for an opinion to resolve the legal dispute between OMB and ACHP.
July 27, 1983	OMB provides ACHP with a proposed draft of ACHP's regulations prepared by OMB.
Sept. 28, 1983	ACHP submits staff-prepared revisions of its October 1982 proposed section 106 regulations to OMB for consideration.
Sept. 30, 1983	National Conference of State Historic Preservation Officers and the National Trust for Historic Preservation, both members of ACHP, oppose both OMB's and ACHP staff's drafts. The state officers' conference submits its own draft.
Oct. 28, 1983	A memorandum opinion from the Justice Department's Office of Legal Counsel holds that ACHP's October 1982 proposed

## APPENDIX I

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regulations and its existing regulations exceed statutory authority.

Oct. 31, 1983      ACHP unanimously tables OMB's draft regulations to study the Justice Department's memorandum opinion and to discuss it with the White House.

Nov. 9, 1983      OMB turns down ACHP's October 1982 draft of revised regulations as inconsistent with Executive Order 12291.

Dec. 2, 1983      ACHP and Interior develop another draft to meet legal concerns of Justice's Office of Legal Counsel and provide draft to OMB.

Dec. 6, 1983      OMB raises further legal concerns and requests an additional opinion from Justice's Office of Legal Counsel.

Dec. 12, 1983      Justice's Office of Legal Counsel finds ACHP's December 1983 draft to be within ACHP's authority, provided certain clarifications are made.

Dec. 13, 1983      ACHP endorses the December 1983 draft in principle.

Jan. 9, 1984      The National Trust for Historic Preservation and the National Conference of State Historic Preservation Officers formally object to ACHP's course of action.

Feb. 13, 1984      ACHP is reviewing its December 1983 draft regulations to develop the clarifications required by Justice in its December 12, 1983, letter to OMB and ACHP.

STATUS OF AGENCY

ACTIONS ON RECOMMENDATIONS IN OUR REPORT  
ENTITLED "ARE AGENCIES DOING ENOUGH OR TOO  
MUCH FOR ARCHEOLOGICAL PRESERVATION? GUIDANCE  
NEEDED" (CED-81-61, Apr. 22, 1981)

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The Secretary of the Interior should seek an amendment to the Archeological and Historic Preservation Act clarifying Interior's rulemaking authority.

Interior officials have not sought any amendment because they believe the National Historic Preservation Act Amendments of 1980 give the Secretary of the Interior sufficient additional authority for promulgating standards and guidelines to assist federal agencies in carrying out their archeological and historic preservation responsibilities. Interior plans to propose revisions during fiscal year 1984 to the existing draft regulations under the 1974 Archeological and Historic Preservation Act, as amended, which will not deal with the technical or "how to" aspects of archeology but will be directed at establishing procedures for carrying out Interior's responsibility for various requirements. Interior believes that because the regulations will be procedural rather than technical, the regulations will fall within the Secretary's authority. Also, Interior officials believe that the proposed revisions to the existing draft regulations will give the agencies more flexibility in that the revisions will result in procedural guidelines whose implementation will be left to



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the respective agencies. In addition, Interior officials believe that any questions raised about Interior's rule-making authority during the process of revising the regulations can be submitted to Justice for resolution.

## GAO COMMENT:

No action taken. After the passage of the 1974 Archeological and Historic Preservation Act, Interior issued draft regulations that have yet to be finalized, setting forth detailed procedures on how federal agencies are to conduct surveys and investigations to locate and identify archeological properties. Interior claims, but other federal agencies dispute, that section 5(c) of the Archeological and Historic Preservation Act, 16 U.S.C. 469a-3 (1976), and section 2 of the 1935 Historic Sites Act, 16 U.S.C. 462(k)(1976), provide Interior the authority to promulgate such rules and regulations. However, neither of these provisions was amended or altered by the 1980 amendments. In our April 1981 report, Interior acknowledged that its ability to influence and guide other agencies more effectively depended in part on clarifying Interior's unclear rulemaking authority under the Archeological and Historic Preservation Act of 1974. Interior has moved away from this viewpoint and now believes its proposed revisions to the existing draft regulations under the 1974 act will give the agencies more flexibility in that the revisions will result in procedural guidelines whose implementation will be left to the respective agencies. Because it is not known how agencies will interpret and respond to these procedural regulations or guidelines, Interior cannot be sure its authority will not be questioned in the future. Although Interior officials believe that any questions raised about Interior's rulemaking authority during the process of revising the existing draft regulations under the 1974 act can be submitted to Justice for resolution, we continue to believe that amending the 1974 act would appear to be a more final and effective disposition of the questions concerning Interior's rulemaking authority.

The Secretary of the Interior should propose to OMB revisions to Executive Order 11593 to state that federal agencies are required to conduct archeological surveys

Interior officials did not make any proposals to OMB because they believed that most major points of Executive Order 11593 were codified by the 1980 amendments (P.L. 89-665, sec.

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on federal lands only (1) when a land-disturbing activity is planned, (2) when the operation of existing projects may threaten resources, or (3) on a sampling basis as part of overview studies for general planning purposes.

110, as added by P.L. 96-515, sec. 206 (16 U.S.C. 470h-2)) and that revision of the executive order would accomplish little. However, Interior officials prepared guidance to agencies that must meet inventory requirements. This guidance was published on September 29, 1983, in the notices section of the Federal Register for comment and use. Guidelines for implementing section 110 of the National Historic Preservation Act are under development and, according to Interior, will be published in the Federal Register for comment early in calendar year 1984.

## GAO COMMENT:

Action in process, some of which is alternative to action we recommended. Even though most of the major points of Executive Order 11593 were codified by the 1980 amendments, it left intact the requirement that archeological surveys should be done on all federal lands and did not address the points we were making in our recommendation.

The Secretary of the Interior should establish formal coordination procedures among federal and state agencies performing archeological overviews.

According to Interior officials, it has initiated certain activities to coordinate federal and state overview activities. For example, the National Park Service's (NPS') Southeast Regional Office has an ongoing pilot program which keeps computerized reports of all archeological projects in the region, which federal agencies and others can use to avoid duplicating others' work. In addition, Interior believes the uniform implementation of its Resource Protection Planning Process (RP3) by federal and state agencies will effect the desired planning

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coordination between governmental levels. According to Interior, work was begun on a comprehensive computerized archeological and cultural resource data base during fiscal year 1984. Interior believes this data base will significantly improve formal coordination procedures among federal and state agencies performing archeological overviews.

## GAO COMMENT:

Action in process. Although Interior is taking the above actions, we do not believe the formal coordination procedures called for in our recommendation will happen on a nationwide basis until (1) a uniform resource protection planning process has been implemented in all the states, (2) Interior's comprehensive computerized archeological and cultural resource data base becomes operational, (3) Interior finalizes regulations under the 1974 Archeological and Historic Preservation Act, setting forth procedures on how federal agencies are to conduct surveys and investigations to locate and identify archeological properties, and (4) Interior takes the lead in implementing such procedures and a system to coordinate archeological overviews.

The Secretary of the Interior should finalize regulations setting forth detailed procedures explaining how federal agencies are to conduct surveys and investigations to locate and identify archeological properties.

According to Interior officials, our concern in this area has been addressed through the preparation of standards and associate guidance which were published in the notices section of the Federal Register on September 29, 1983. Interior is also preparing guidelines for agencies to carry out their responsibilities under section 110 of the National Historic Preservation Act. Interior expects the draft guidelines to be available for comment by April 30, 1984.

## GAO COMMENT:

Action in process.

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The Secretary of the Interior should allocate a portion of historic preservation fund grants for state preservation plan development and make available to states 70 percent federal against 30 percent state matching grants to use in developing statewide plans based on criteria established by the Secretary in consultation with the various states.

According to Interior officials, 70/30 percent funding was made available to the states in fiscal years 1982 and 1983. In fiscal year 1983, all states were required to make tangible and measurable progress toward a state comprehensive planning system with guidance provided by Interior's Technical Standards for Comprehensive Historic Preservation Planning published on September 29, 1983.

## GAO COMMENT:

Action taken.

The Secretary of the Interior should require states to submit adequate plans as a condition of receiving historic preservation funds.

Adequate comprehensive planning is a requirement for an approved state program under section 101(b)(3)(C) of the National Historic Preservation Act, as amended. According to Interior officials, these plans are reviewed as part of the state program approval process. During fiscal year 1983, Interior required all states to make tangible and measurable progress toward a state comprehensive planning system.

## GAO COMMENT:

Action taken.

The Secretary of the Interior should issue guidelines for the appropriate and consistent development of state archeological data management capabilities, state archeological surveys, and determination of state and local site significance.

Interior said that standards and guidelines for archeology and historic preservation were developed by NPS and issued for use on September 29, 1983, in the areas of archeological investigation, preservation planning, identification, evaluation, and registration. In curation, the standards and

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guidelines are in the early stages of development.

## GAO COMMENT:

Action taken and in process.

The Secretary of the Interior should, upon approval of a state's preservation plan, make state historic preservation offices the focal point for determining whether archeological resources are significant enough to list on the National Register of Historic Places.

NPS is working toward implementing this concept by providing training in comprehensive planning and will be working within current legal authority to develop a more programmatic format for nominations, which includes NPS' certifying the adequacy of the states' National Register nomination programs. According to Interior officials, once a state is certified, it would be given increased responsibility within statutory limitations for making determinations on National Register nominations, thereby strengthening its role in all aspects of the nomination process.

## GAO COMMENT:

Action in process.

The Secretary of the Interior should promulgate regulations on federal data recovery efforts and reporting systems to include

--the specific circumstances and extent to which agencies are required to excavate sites outside a project's direct impact area;

--who should pay for archeological work so that unnecessary project delays and increased costs can be prevented;

Interior has not yet promulgated regulations. NPS intends to prepare draft regulations, which will differ considerably from those draft regulations published in 1977 as 36 CFR 66, because of the new requirements introduced by the 1980 amendments. Interior officials state that these regulations will be worked on and published in draft in fiscal year 1984.

According to Interior, its policy on who should pay was published in the Federal Register on March 26, 1979, and further clarified by sec. 302

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of the National Historic Preservation Act, which was added by sec. 501 of the 1980 amendments (16 U.S.C. 470w-1). Interior also pointed out that funding authorization under the 1974 Archeological and Historic Preservation Act expired as of September 30, 1983.

--the development of agency reporting systems for providing information to Interior and agency management on program costs and accomplishments so that program effectiveness can be monitored and reported to the Congress; and

According to Interior, a letter was sent out on January 30, 1984, notifying agencies of Interior's intent to revamp the reporting system in conjunction with the development of the computerized data base.

--improved dissemination of archeological reports to the National Technical Information Service so that information can be made available to the archeological profession and federal, state, and local officials in a decisionmaking capacity.

Interior believes the development of its computerized archeological and cultural resource data base, begun in fiscal year 1984, will establish a central repository of information on archeological and other cultural resource projects that will improve the availability of archeological information and data. Interior said it provided guidelines and directions to other federal agencies on how to establish their own National Technical Information Service accounts for submitting reports.

## GAO COMMENT:

No action taken. Interior acknowledged that regulations to be issued as 36 CFR 66 have not yet been promulgated but will be worked on and published in draft in fiscal year 1984. Although Interior's policy on who should pay for archeological work was published in the Federal Register on March 26, 1979, we stated in our April 1981 report that there was a controversy surrounding this issue that resulted in project delay and often in significant construction cost escalation. Moreover, in 1982, Interior changed its March 1979 policy which lessened the financial

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assistance Interior provided to other agencies. As for the 1980 amendments, we stated in our previous report that although the new amendments broadened the preservation activities an agency may pay for as planning costs, the question as to who was responsible for paying was still open to agency interpretation and controversy, and thousands of dollars would continue to be wasted because of construction delays until responsibility was specifically spelled out in the archeological salvage laws. In commenting on a draft of this report in February 1984, HUD officials said that the controversy still existed. Therefore, we believe our recommendation on this point has not been addressed. Although Interior intends to revamp the reporting system in conjunction with development of the computerized data base, it had not done so as of our cutoff date. Therefore, this intended action cannot be classified as action in process. In taking the above recommendation as a whole, Interior has taken action on only one of the four points we made--the improved dissemination of archeological reports to the National Technical Information Service--so we have classified the status of the recommendation, as a whole, as no action taken.

Advisory Council on Historic  
Preservation

In its review of agency proposals, ACHP should require federal agencies to define specific significant research questions to be addressed in data recovery, in order to justify archeological excavation costs.

According to ACHP, it cannot require agencies to define specific significant research questions to be addressed in data recovery. However, it has strongly encouraged such action through its handbook and its manual entitled, respectively, Treatment of Archeological Properties and Manual of Mitigation Measures, as well as by programmatic memoranda of agreements and through day-to-day consultation on projects. However, according to ACHP, it had planned efforts to (1) promote focused research to include consultation with the academic community to establish significant research topics of national scope and (2) review agency procurement processes to determine how they can be

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changed to obtain better results. An ACHP official said that both efforts were suspended pending resolution of the dispute over ACHP's authority.

## GAO COMMENT:

Action suspended pending resolution of the dispute over ACHP's authority.

In its review of agency proposals, ACHP should require federal agencies to relate data recovery to priorities defined in state historic preservation plans where approved plans exist.

According to the ACHP, it cannot require this relationship, but it has encouraged such action through its handbook entitled Treatment of Archeological Properties. ACHP also indicated that in its day-to-day work, it seeks to use state plans to structure archeological work where applicable but that few state historic preservation plans are sufficiently detailed and directive to be very useful in guiding the establishment of data recovery priorities. However, ACHP pointed out that (1) the ACHP-approved draft regulations of October 1982 provide for more extensive use of state plans and (2) the National Conference of State Historic Preservation Officers' draft of October 1983 provides for the use of state plans in lieu of compliance with ACHP's regulations as such, subject to approval by ACHP, but that neither approach has been sanctioned by OMB.

## GAO COMMENT:

Action suspended pending resolution of the dispute over ACHP's authority.



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RESPONSIBLE AGENCYSTATUS AS OF FEBRUARY 13, 1984Advisory Council on Historic  
Preservation (con't)

In its review of agency proposals, ACHP should require federal agencies to establish peer review panels on large and controversial archeological projects to help agencies determine how much archeological excavation is necessary and to monitor contractor progress and performance.

With the cooperation of the Society of Professional Archeologists, ACHP made an effort to establish a roster of qualified archeologists willing to serve on peer review panels, but geographic coverage was so spotty that ACHP did not find the roster useful. Although ACHP has encouraged peer review panels where applicable, it has encountered a fair degree of agency resistance to their use. However, ACHP plans to continue to recommend peer review panels where they appear appropriate.

## GAO COMMENT:

Action taken.

Department of Agriculture

The Secretary of Agriculture should require the Forest Service to improve its program for identifying archeological resources by performing archeological surveys on Forest Service lands before timber harvests or other land-altering projects.

The Secretary's position on archeological resource management has been restated and prepared for publication in the Federal Register. In addition, section 2360 of the Forest Service manual on cultural resource management has been revised to provide a better integrated and more effective treatment of archeological resources. These revisions, based on ACHP regulations proposed at the time, are being reviewed but will not be issued to the field until the disagreement about ACHP's authority is resolved.

## GAO COMMENT:

Action suspended pending resolution of the dispute over ACHP's authority.

RECOMMENDATION TO  
RESPONSIBLE AGENCYSTATUS AS OF FEBRUARY 13, 1984Department of Agriculture (con't)

The Secretary of Agriculture should require the Forest Service to improve its program for identifying archeological resources by making sufficiently comprehensive surveys to preclude the need to resurvey the same lands for future projects.

In fiscal year 1982, the Forest Service implemented a system for reporting cultural resource management accomplishments; the first report is being assembled. According to Forest Service officials, this revised process encourages each region and forest to track the work done in archeological survey and to develop sampling designs for areas where less intensive inventories are needed. Also, a draft document is being prepared to recommend changes in the archeological inventory process that will increase effectiveness and efficiency.

## GAO COMMENT:

Action in process.

The Secretary of Agriculture should require the Forest Service to improve its program for identifying archeological resources by monitoring projects to verify that significant archeological sites are protected.

According to the Forest Service, the Cultural Resource Management Accomplishment Report implements many of the monitoring requirements on project actions. Section 2360 instructions in the Forest Service manual include monitoring and reporting guidelines. However, guidelines are not being issued to the field until the disagreement about ACHP's authority is resolved.

## GAO COMMENT:

Action suspended pending resolution of the dispute over ACHP's authority.

RECOMMENDATION TO  
RESPONSIBLE AGENCYSTATUS AS OF FEBRUARY 13, 1984Department of Housing and Urban Development,  
Department of the Interior, and the Advisory  
Council on Historic Preservation

The Secretaries of (HUD) and Interior and ACHP, either together or separately, should seek the opinion of the Attorney General concerning the extent to which HUD is required to make archeological surveys to determine whether archeological resources will be affected by federally assisted housing projects.

In HUD's opinion, OMB's request to the Justice Department for an opinion on ACHP's statutory authority supersedes GAO's recommendation. HUD officials believe the linkage between ACHP's section 106 procedures and any recovery which might be required of archeological resources is so close that there is no point in proceeding until the larger legal question is answered and OMB determines if ACHP's revised regulations should be published.

Interior officials have not sought the opinion of the Attorney General but, instead, are attempting to encourage HUD to undertake the required preservation activities pursuant to authorities in the 1980 amendments.

ACHP has not sought the opinion of the Attorney General. It tried to enter into a programmatic memorandum of agreement with HUD concerning archeological surveys, using as a basis for the agreement an archeological handbook being prepared by HUD. However, consultation lapsed, and HUD never issued the handbook. ACHP sees no point in pursuing the problem of surveys on government-assisted housing projects until the disagreement over ACHP's authority has been resolved.

**GAO COMMENT:**

Actions suspended. HUD's role in the archeological survey process cannot be determined until the dispute over ACHP's statutory authority is settled.

STATUS OF INTERIOR'S AND ACHP'S ACTIONS  
IN RESPONSE TO PROVISIONS OF THE NATIONAL  
HISTORIC PRESERVATION ACT AMENDMENTS OF 1980

<u>Section<sup>a</sup></u>	<u>Requirement</u>	<u>Responsible agency</u>	<u>Deadline</u>	<u>Status as of February 13, 1984</u>
<b>DESIGNATION AND DOCUMENTATION OF HISTORIC PROPERTIES</b>				
101(a)(2)	Requires establishment or revision of criteria for National Register and National Historic Landmark designation.	Interior, in consultation with national historical and archeological associations.	N <sup>a</sup> b	Interior has completed its review of the National Register criteria. A revision incorporating "engineering" into the criteria was published in the Federal Register on Nov. 16, 1981. The National Park Service will issue guidelines for the more precise application of National Register criteria in fiscal year 1984. Interior officials believe that this satisfies the requirement of law, although they believe it is possible that further refinement of the criteria will occur in fiscal year 1984. Criteria for National Historic Landmarks were revised and published as final rules on Feb. 2, 1983, as 36 CFR 65.

<sup>a</sup>Section numbers refer to sections of the National Historic Preservation Act, as amended, unless otherwise noted.

<sup>b</sup>Not applicable.

<u>Section</u>	<u>Requirement</u>	<u>Responsible agency</u>	<u>Deadline</u>	<u>Status as of February 13, 1984</u>
DESIGNATION AND DOCUMENTATION OF HISTORIC PROPERTIES (con't)				
101(a)(2)	Requires promulgation or revision of regulations as may be necessary for			
	(A)nominating properties for inclusion in, and removal from, the National Register and the recommendation of properties by certified local governments;	Interior	NA	Interim regulations were published on Nov. 16, 1981, as 36 CFR 60. Interior officials plan to circulate a draft of the proposed rule by Apr. 1984 and plan to publish the document for a 60-day comment period in June following departmental, OMB, and congressional reviews.
	(B)designating properties as National Historic Landmarks and removing such designation;	Interior	NA	Regulations were published as final rules on Feb. 2, 1983, as 36 CFR 65.
	(C)considering appeals relating to (A) and (B) above or any failure or refusal by a nominating authority to nominate or designate;	Interior	NA	Proposed rules on appeals procedures were published in Nov. 1981. Final regulations were published on Oct. 12, 1983. The process regarding National Historic Landmarks is covered in 36 CFR 65.
	(D)nominating historic properties for inclusion in the World Heritage List;	Interior	NA	Regulations were published as final rules on May 27, 1982, as 36 CFR 73.

<u>Section</u>	<u>Requirement</u>	<u>Responsible agency</u>	<u>Deadline</u>	<u>Status as of February 13, 1984</u>
DESIGNATION AND DOCUMENTATION OF HISTORIC PROPERTIES (con't)				
101(a)(2)	(E)making determinations of eligibility of properties for inclusion on the National Register; and	Interior	NA	<p>The procedures for determining eligibility, which have been published and in effect since Sept. 21, 1977, as 36 CFR 63, were being revised and consolidated into the National Register nomination and listing procedures as 36 CFR 60, mentioned under section 101(a)(2)(A). Interior officials expect to circulate a draft of the proposed rule by Apr. 1984 and plan to publish the document for a 60-day comment period in June following departmental, OMB, and congressional reviews.</p>
	(F)notifying owners, local governments, and the public of any properties being considered for nomination or designation.	Interior	NA	<p>Regulations in 36 CFR 65, published as final rules on Feb. 2, 1983, cover owner notification when property is being considered as a National Historic Landmark. Regulations in 36 CFR 73, published as final rules on May 27, 1982, cover notification when property is being considered for the World Heritage List. Owner nominations for National Register nominations are covered under the Nov. 16, 1981, interim rules as 36 CFR 60 and, according to Interior officials, they expect to circulate a draft of the proposed rule by Apr. 1984 and plan to publish the document for a 60-day comment period in June following departmental, OMB, and congressional reviews.</p>

<u>Section</u>	<u>Requirement</u>	<u>Responsible agency</u>	<u>Deadline</u>	<u>Status as of February 13, 1984</u>
DESIGNATION AND DOCUMENTATION OF HISTORIC PROPERTIES (con't)				
101(a)(6)	Requires promulgation of regulations that provide an opportunity to property owners to concur in or object to a National Register or National Historic Landmark nomination or designation.	Interior	NA	These regulations were published under 36 CFR 65 as final rules on Feb. 2, 1983, for property which may be designated as a National Historic Landmark, and in interim rules under 36 CFR 60 published Nov. 16, 1981, for properties to be included on the National Register. Interior officials expect to circulate a draft of the proposed rule by Apr. 1984 and plan to publish the document for a 60-day comment period in June following departmental, OMB, and congressional reviews.
101(a)(7)	Requires promulgation or revision of regulations for	Interior	NA	The Secretary had not promulgated such regulations. The National Park Service (NPS) expects to publish curation regulations for comment in fiscal year 1984. In the meantime, NPS ensures long-range curation of records and materials from federal lands by requiring contractors and applicants for archeological permits to develop curation agreements with qualified repositories before beginning work.
	(A) ensuring the placement of significant prehistoric and historic artifacts and associated records with institutions having adequate long-term curatorial capabilities;			

<u>Section</u>	<u>Requirement</u>	Responsible <u>agency</u>	<u>Deadline</u>	<u>Status as of February 13, 1984</u>
DESIGNATION AND DOCUMENTATION OF HISTORIC PROPERTIES (con't)				
101(a)(6)	Requires promulgation of regulations that provide an opportunity to property owners to concur in or object to a National Historic Landmark nomination or designation.	Interior	NA	These regulations were published under 36 CFR 65 as final rules on Feb. 2, 1983, for property which may be designated as a National Historic Landmark, and in interim rules under 36 CFR 60 published Nov. 16, 1981, for properties to be included on the National Register. Interior officials expect to circulate a draft of the proposed rule by Apr. 1984 and plan to publish the document for a 60-day comment period in June following departmental, OMB, and congressional reviews.
101(a)(7)	Requires promulgation or revision of regulations for  (A) ensuring the placement of significant prehistoric and historic artifacts and associated records with institutions having adequate long-term curatorial capabilities;	Interior	NA	The Secretary had not promulgated such regulations. The National Park Service (NPS) expects to publish curatorial regulations for comment in fiscal year 1984. In the meantime, NPS ensures long-range curatorial records and materials from federal lands by requiring contractors and applicants for archeological permits to develop curatorial agreements with qualified repositories before beginning work.



<u>Section</u>	<u>Requirement</u>	Responsible <u>agency</u>	<u>Deadline</u>	<u>Status as of February 13, 1984</u>
DESIGNATION AND DOCUMENTATION OF HISTORIC PROPERTIES (con't)				
101(a)(7)	(B) Establishing a uniform process and standards for historic properties' documentation which will complement or be incorporated into the national historical, architectural, and engineering records of the Library of Congress; and	Interior	NA	A notice of availability of proposed documentation standards for public comment and review was published in the Federal Register on Nov. 8, 1982. According to Interior officials, these standards have been incorporated into a comprehensive set of Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation. This comprehensive set of standards and guidelines was published in the notice section of the Federal Register on Sept. 29, 1983.
	(C) certifying local governments for participation and funding under the act.	Interior	NA	Proposed regulations on certification of local governments were published on May 2, 1983, as 36 CFR 61. According to Interior officials, draft changes were made on the basis of comments received on the proposed rule, and final regulations are expected to be published by Mar. 1984.

<u>Section</u>	<u>Requirement</u>	<u>Responsible agency</u>	<u>Deadline</u>	<u>Status as of February 13, 1984</u>
<b>STATE PROGRAMS</b>				
101(b)(1)	Requires promulgation or revision of regulations for approving State Historic Preservation Programs that comply with requirements outlined in the act.	Interior, in consultation with the National Conference of State Historic Preservation Officers and the National Trust for Historic Preservation.	NA	Proposed regulations were published on May 2, 1983, as 36 CFR 61. According to Interior officials, draft changes were made on the basis of comments received on the proposed rule, and final regulations were expected to be published by Mar. 1984. In addition, comments were being solicited on the draft "reserved" section of those regulations that describes the process of state historic preservation program approval. Interior officials expect the "reserved" section to be published as proposed regulations by the end of Apr. 1984.
101(b)(2)	Requires periodic evaluation of state programs once a program has been approved to determine whether the program is in compliance with the act.	Interior	NA	According to Interior officials, (1) a state program review process was developed and tested in three states, (2) instructions were provided to NPS regions on Aug. 2, 1983, and (3) all evaluations were completed by Dec. 12, 1983, except for the Trust Territories, Northern Marianas, Puerto Rico, and Samoa. For programs not evaluated by Dec. 12, 1983, Interior will issue interim approvals.

<u>Section</u>	<u>Requirement</u>	<u>Responsible agency</u>	<u>Deadline</u>	<u>Status as of February 13, 1984</u>
STATE PROGRAMS (con't)				
101(c)(1)	Requires certification that the local government meets certain statutory eligibility criteria before the local government is certified for participation and funding under the act.	Interior and State Historic Preservation Offices (SHPOs).	NA	No local governments had been officially certified by the Secretary nor could certification occur until the regulations for this process (36 CFR 61) are published, which Interior officials expect to happen by Mar. 1984. According to Interior, a certification process had been designed and field tested by Interior officials on the basis of their consultation with the states and various other preservation organizations, and they expect that the first local governments could be certified by the Secretary before the end of Dec. 1984.
211	Requires establishment, by regulation, of such procedures as may be necessary to provide for participation by local governments in proceedings and other actions taken by ACHP with respect to undertakings referred to in section 106 which affect such local governments.	ACHP	NA	ACHP did not establish procedures but instead thoroughly rewrote its regulations (36 CFR Part 800), incorporating some procedures for local government participation. These draft regulations are being held up as a result of the dispute among ACHP, Interior, and OMB over the scope and nature of ACHP's authorities. ACHP expects to broaden the provisions of the regulations for participation by certified local governments once the dispute over ACHP's statutory authority is resolved and Interior publishes 36 CFR 61.

<u>Section</u>	<u>Requirement</u>	<u>Responsible agency</u>	<u>Deadline</u>	<u>Status as of February 13, 1984</u>
<b>FEDERAL PROPERTIES</b>				
101(f)	Requires the promulgation of guidelines for the heads of federal agencies who must assume responsibility for preserving historic properties owned or controlled by their agencies.	Interior, in consultation with ACHP.	NA	According to Interior officials, guidelines are being drafted and are expected to be sent to ACHP for comment by Apr. 30, 1984.
101(g)	Requires the establishment of professional standards for preserving historic properties under federal ownership or control.	Interior, in consultation with Secretaries of Agriculture and Defense, the Smithsonian Institution, and the Administrator of the General Services Administration.	Dec. 12, 1981.	According to Interior officials, this requirement was being met by (1) the newly developed Secretary's Standards and Guidelines for Archeology and Historic Preservation already described under section 101(a)(7)(B) and (2) an updating of the existing Secretary's Standards and Guidelines for Historic Preservation Projects, which were being incorporated into the newly developed Standards and Guidelines for Archeology and Historic Preservation. According to Interior officials, the whole set of standards and guidelines was made available for comment and use on Sept. 29, 1983, with the exception of curators, for which standards and guidelines are to be developed in fiscal year 1984.

<u>Section</u>	<u>Requirement</u>	<u>Responsible agency</u>	<u>Deadline</u>	<u>Status as of February 13, 1984</u>
<b>FEDERAL PROPERTIES (con't)</b>				
110(a)(1)	Requires heads of all federal agencies to assume responsibility for preserving historic properties owned or controlled by such agency and to use such properties where practicable before acquiring, constructing, or leasing buildings in carrying out agency responsibilities.	All federal agencies, including Interior.	NA	On Aug. 14, 1981, Interior promulgated a preservation policy to be followed by its bureaus. NPS, as lead agency, was drafting guidelines for carrying out federal agency responsibilities under section 110. Interior officials expected the draft guidelines to be available for comment by Apr. 30, 1984. Interior officials also believe that many actions described in comments under sections such as 101(a)(7)(B), 110(a)(2), and 110(c) fulfill Interior's responsibilities for preserving historic properties it owns or controls.
110(a)(2)	Requires each federal agency to establish a program to locate, inventory, and nominate to the Secretary all properties under the agency's ownership or control which appear to qualify for inclusion on the National Register.	Interior and each federal agency, with advice of Interior and in cooperation with SHPOs.	NA	According to Interior officials, all the major land-managing bureaus in Interior had programs to locate, inventory, and nominate to the Register significant historic properties under their ownership or control. However, Interior officials said that in many cases, the bureaus do not have sufficient resources to inventory and nominate properties on all bureau lands and, as a result, the Interior bureaus were concentrating their archeological efforts in areas to be affected by land modification projects or similar activities and to areas where information is required to fulfill management needs as recommended in GAO's Apr. 1981 report, CED-81-61.

<u>Section</u>	<u>Requirement</u>	<u>Responsible agency</u>	<u>Deadline</u>	<u>Status as of February 13, 1984</u>
<b>FEDERAL PROPERTIES (con't)</b>				
110(b)	Requires each federal agency to assure that appropriate records are made and deposited in the Library of Congress for future use and reference if, as a result of the agency's action, a historic property is to be substantially altered or demolished.	Interior and each federal agency.	NA	<p>Interior bureaus assure that appropriate records are made and kept by using the standards in the Secretary's Standards and Guidelines for Archeology and Historic Preservation to document historic structures on or eligible for the National Register that are to be destroyed or substantially altered as a result of bureau actions. These records are then placed in the Historic American Buildings Survey/Historic American Engineering Record collections at the Library of Congress. On an internal basis, Interior bureaus make records and reports on the scientific values of archeological properties recovered through mitigation efforts that are due to adverse impacts. Any reports and data materials recovered are deposited with qualified repositories. The NPS external technical assistance program requires that all reports provided as a result of its activities are to meet certain standards found in "Recovery of Scientific, Prehistoric, Historic, and Archeological Data: Methods, Standards, and Reporting Requirements" (draft regulation 36 CFR 66). In addition, the NPS program requires copies of all final reports to be filed with the National Technical Information</p>

<u>Section</u>	<u>Requirement</u>	<u>Responsible agency</u>	<u>Deadline</u>	<u>Status as of February 13, 1984</u>
FEDERAL PROPERTIES (con't)				
110(c)	Requires head of each federal agency, unless exempted, to designate a qualified official as the agency's preservation officer.	Interior and each federal agency.	NA	Service, with copies of the reports also provided to the appropriate state historic preservation officer.  According to Interior, all of its agencies and bureaus had officially designated preservation officers except for the Bureau of Land Management (BLM), whose senior archeologist was fulfilling the responsibilities of that post.
110(d)	Requires all federal agencies, consistent with an agency's missions and mandates, to carry out agency programs and projects in accordance with the act and give consideration to programs and projects which will further the act's purposes.	Interior and each federal agency.	NA	According to Interior officials, its bureaus' programs and projects were being carried out in accordance with the act's purpose through such means as:  --Procedural documents prepared and cited elsewhere in this appendix.  --Compliance with section 106, which allows ACHP to comment on those activities of those bureaus that may have possible impacts on important historic properties.  --National Register review of nominations, registration of properties, and guidance provided on types of properties eligible for the National Register and how to nominate them.

<u>Section</u>	<u>Requirement</u>	<u>Responsible agency</u>	<u>Deadline</u>	<u>Status as of February 13, 1984</u>
<b>FEDERAL PROPERTIES (con't)</b>				
110(b)	Requires each federal agency to assure that appropriate records are made and deposited in the Library of Congress for future use and reference if, as a result of the agency's action, a historic property is to be substantially altered or demolished.	Interior and each federal agency.	NA	<p>Interior bureaus assure that appropriate records are made and kept by using the standards in the Secretary's Standards and Guidelines for Archeology and Historic Preservation to document historic structures on or eligible for the National Register that are to be destroyed or substantially altered as a result of bureau actions. These records are then placed in the Historic American Buildings Survey/Historic American Engineering Record collections at the Library of Congress. On an internal basis, Interior bureaus make records and reports on the scientific values of archeological properties recovered through mitigation efforts that are due to adverse impacts. Any reports and data materials recovered are deposited with qualified repositories. The NPS external technical assistance program requires that all reports provided as a result of its activities are to meet certain standards found in "Recovery of Scientific, Prehistoric, Historic, and Archeological Data: Methods, Standards, and Reporting Requirements" (draft regulation 36 CFR 66). In addition, the NPS program requires copies of all final reports to be filed with the National Technical Information</p>



<u>Section</u>	<u>Requirement</u>	<u>Responsible agency</u>	<u>Deadline</u>	<u>Status as of February 13, 1984</u>
<b>FEDERAL PROPERTIES (con't)</b>				
				<p>—The use of training programs in National Register procedures, preservation planning, legal preservation requirements, principles of archeology, and others.</p> <p>—The monitoring of state plans, and grants for historic preservation.</p> <p>—Investigations made and required by section 4(a) of P.L. 86-523, as added by P.L. 93-291, sec. 1(3)(16 U.S.C. 469a-2(a)) where federal agency activities may destroy important archeological data.</p> <p>—Technical assistance provided to federal agencies, states, and the private sector by reviewing reports, commenting on procedures, preparing scope of work for archeological projects, and assisting in the selection and monitoring of archeological contractors.</p>
110(e)	Requires review and approval of all plans for the transfer of surplus federally owned historic properties.	Interior	Within 90 days after receipt of such plans.	According to Interior officials, this requirement was being carried out by NPS' regional directors, who review and approve the plans of transferees of surplus federally owned properties within 90 days of receipt of a

<u>Section</u>	<u>Requirement</u>	<u>Responsible agency</u>	<u>Deadline</u>	<u>Status as of February 13, 1984</u>
FEDERAL PROPERTIES (con't)				
110(f)	Requires that, prior to approval of any federal undertaking which may directly and adversely affect a National Historic Landmark, plans and actions be made and taken to minimize harm to such landmark and to provide ACHP a reasonable opportunity to comment.	Head of each federal agency, including Interior, responsible for a federal undertaking.	NA	<p>completed application. The exception is a dispute between BLM and ACHP over whether section 110(e) applies to all federal surplus property transfers or only to transfers for historic monument purposes. See Interior response under section 110(f).</p> <p>According to Interior, all of its major land-managing bureaus had developed or were developing internal planning guidance to ensure that cultural resources are fully considered during the planning process. These agencies' procedures can be found in the following sources:</p> <p>NPS--Directives 2 and 28.  BLM--Manuals 8100 and 8111.  Documents exist but have not been circulated because BLM's solicitor will not let these manuals go forward until the dispute over ACHP's statutory authority is resolved.  Bureau of Indian Affairs (BIA)--30 BIA Manual Supplement 2.  Bureau of Reclamation--Manual series 350, part 376.11.  Fish and Wildlife Service--Interim Guidelines on Historic Preservation (meant to supplement material issued by NPS).</p>

<u>Section</u>	<u>Requirement</u>	<u>Responsible agency</u>	<u>Deadline</u>	<u>Status as of February 13, 1984</u>
<b>FEDERAL PROPERTIES (con't)</b>				
110(j)	Requires promulgation of regulations whereby the requirements imposed on federally owned or controlled historic properties could be waived in the event of a major natural disaster or an imminent threat to the national security.	Interior	NA	Office of Surface Mining--Proposed rule 83-621. Minerals Management Service--Interim guidance on cultural resources. Bureau of Mines--This agency does not have its own procedural documents but follows 36 CFR 800.  Regulations 36 CFR 78 were drafted and are being reviewed internally by Interior officials. They expect these regulations to be published as proposed rules by Mar. 1984.
202(a)(6)	Requires review of federal agencies' policies and programs and recommendation of methods to improve the effectiveness, coordination, and consistency of those policies and programs with the policies and programs carried out under this act.	ACHP	NA	According to ACHP, section 202(a)(6) was used as a basis for expanding ACHP's programmatic consultation with agencies. It believes the numerous programmatic memorandums of agreement entered into since 1980 represent advice offered to and accepted by agencies. Although ACHP believes a more formal program and policy review is authorized under this section, it has only used this authority once. ACHP said that further use of this authority awaits the resolution of the dispute with OMB over ACHP's statutory authority.

<u>Section</u>	<u>Requirement</u>	<u>Responsible agency</u>	<u>Deadline</u>	<u>Status as of February 13, 1984</u>
<b>FEDERAL PROPERTIES (con't)</b>				
214	Requires promulgation of either regulations or guidelines for exempting federal programs or undertakings from the act's requirements when an exemption is determined to be consistent with the act's purposes.	ACHP, with the concurrence of Interior.	NA	Effective Oct. 18, 1982, ACHP promulgated guidelines in the <u>Federal Register</u> under which federal agencies may be exempted from all or part of the requirements of the National Historic Preservation Act when such exemption is consistent with the act's purposes. According to ACHP, as of Feb. 13, 1984, no applications for exemptions had been received.
<b>INTERNATIONAL ACTIVITIES</b>				
401(a) <sup>c</sup>	Requires direction and coordination of United States participation in the Convention Concerning the Protection of the World Cultural and Natural Heritage.	Interior, in cooperation with the Secretary of State, the Smithsonian Institution, and ACHP.	NA	According to Interior officials, the Secretary has provided such direction and coordination.
401(b) <sup>c</sup>	Requires periodic nomination of properties determined to be of international significance to the World Heritage Committee on behalf of the United States. However,	Interior	NA	Properties were nominated to the World Heritage List in 1983 through a systematic and regular process described in the <u>Federal Register</u> , dated Feb. 23, 1983. According to Interior, seven historic properties and eight natural properties have been nominated.

<sup>c</sup>Section number refers to section of the 1980 amendments.

<u>Section</u>	<u>Requirement</u>	<u>Responsible agency</u>	<u>Deadline</u>	<u>Status as of February 13, 1984</u>
<b>INTERNATIONAL ACTIVITIES (con't)</b>				
	before making such a nomination, the House Committee on Interior and Insular Affairs and the Senate Committee on Energy and Natural Resources are to be notified.			
<b>GRANTS</b>				
101(d)(1)	Requires administration of a program of matching grants-in-aid to the states for historic preservation projects and programs.	Interior	NA	According to Interior officials, funds had been appropriated, and the matching grants-in-aid program was being fully administered.
101(d)(2)	Requires administration of a program for matching grants-in-aid to the National Trust for Historic Preservation.	Interior	NA	According to Interior officials, all funds appropriated by the Congress for the National Trust had been apportioned, and the program was being fully administered by NPS.
101(d)(3)	Requires administration of direct grants for preserving properties on the National	Interior	NA	Interior did not request funding for Historic Preservation Fund grants for fiscal years 1982-84 because of Interior's stated need to exercise fiscal constraints as part of the program to

<u>Section</u>	<u>Requirement</u>	<u>Responsible agency</u>	<u>Deadline</u>	<u>Status as of February 13, 1984</u>
GRANTS (con't)				
	Register. Up to 10% of the annual appropriations for the Historic Preservation Fund may be used for such grants. Grants are to be made in consultation with the SHPO according to the criteria outlined in the act.			control federal deficits. Interior said that the Fund was created at a time (1966) when the nation was experiencing a wholesale loss of historic resources. Interior believes that the Fund has accomplished its major objectives of institutionalizing historic preservation values at state and local government levels and that the Fund is not now required. According to Interior officials, funds appropriated for fiscal years 1982 and 1983 for the section 101(d) programs had been specified by the Congress for state survey, planning, and program administration needs, which had not left any funds available to implement section 101(d)(3). In addition, for fiscal years 1982 and 1983, congressional committees desired that the Historic Preservation Fund not be used for acquiring or developing historic properties.
102(a)(3)	Requires 70% federal funding for costs of state or local historic surveys and inventories. (Federal matching grants under secs. 101(d)(1) and (2) are limited to 50%.)	Interior	NA	According to Interior officials, 43 states used the 70% provision in fiscal year 1982. Some states had not requested 70% funding for reasons of accounting simplicity, such as not having to segregate survey costs from other costs.

<u>Section</u>	<u>Requirement</u>	<u>Responsible agency</u>	<u>Deadline</u>	<u>Status as of February 13, 1984</u>
<b>GRANTS (con't)</b>				
103(b)	Requires that each state be notified of its annual apportionment of grant funds for programs and projects under the act.	Interior	Within 30 days after enactment of appropriation legislation.	For the most part, Interior has not done this within the allotted 30 days.
103(d)	Requires establishment of guidelines for use and distribution of funds to insure that no local government receives a disproportionate share of the 10% of the state apportionment transferred to certified local governments.	Interior	NA	Interior had published regulations as part of 36 CFR 61 for comment on May 2, 1983. Draft changes had been made on the basis of comments received on the proposed rules. Interior officials expect final regulations to be published in Mar. 1984.

<b>LOAN INSURANCE</b>				
104(a)	Requires establishment and maintenance of a program to insure loans made by a private lender to finance projects for the preservation of a property included on the National Register.	Interior	NA	Interior had not established a loan insurance program. Instead, Interior focused its attention on the effective use and efficient administration of the Historic Preservation Federal Tax Incentives Program. According to Interior officials, their experience with this program has shown that rehabilitation work at the

<u>Section</u>	<u>Requirement</u>	<u>Responsible agency</u>	<u>Deadline</u>	<u>Status as of February 13, 1984</u>
LOAN INSURANCE (con't)				
104(b)	Sets forth conditions under which loans may be insured and requires consultation with the Secretary of the Treasury regarding the interest rate for insured loans.	Interior	NA	\$2.3-million-per-annum level has not generated any interest from the private sector in an insured loan program; therefore, Interior has not asked for funds nor has the Congress chosen to appropriate any.
104(e)	Requires specification, by rule and in each contract, of the conditions and method of payment to a private lender as a result of losses the lender incurs on insured loans under section 104.	Interior	NA	Interior had not taken action in this area since a loan insurance program had not been established. Also, see comments on section 104(a).
104(f)	Requires that steps be taken to assure adequate protection of the government's financial interests. This may include obtaining, in connection	Interior	NA	Interior had not taken action in this area since a loan insurance program had not been established. Also, see comments on section 104(a).



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LOAN INSURANCE (con't)				
	with a foreclosure proceeding, the property which secures the loan and operating or leasing such property until conveyance.			
104(g)(1)	Requires an attempt to convey a historic property obtained pursuant to section 104(f) to a governmental or non-governmental entity under conditions that will ensure the property's continued preservation and use.	Interior	NA	Since Interior had not established an insured loan program, no foreclosures had occurred under section 104(f) or conveyances under section 104(g)(1).
104(g)(2)	Requires that funds obtained in the conveyance of property pursuant to section 104(g)(1) be deposited in the Historic Preservation Fund.	Interior	NA	Since Interior had not conveyed any property pursuant to section 104(g)(1), it had not collected any funds.
104(h)	Requires deposit into the Historic Preservation Fund of any fees collected in connection with insuring loans.	Interior	NA	Since Interior had not established an insured loan program, it had not collected any fees to be deposited into the Historic Preservation Fund.

<u>Section</u>	<u>Requirement</u>	<u>Responsible agency</u>	<u>Deadline</u>	<u>Status as of February 13, 1984</u>
<b>EDUCATIONAL, PROMOTIONAL, AND REPORTING DUTIES</b>				
101(h)	Requires that training in, and information about, professional methods and techniques for preserving historic properties and administering the historic preservation program at the federal, state, and local levels be developed and made available to federal agencies and others. Also requires development of mechanisms to provide information about historic preservation to the general public, including students.	Interior	NA	According to Interior officials, training and information had been made available to numerous national, state, and local professional organizations through conferences, training courses, and workshops. These sessions covered such subjects as preservation, tax incentives, and appropriate methods and techniques for rehabilitating and preserving historic structures. Also, the Archeology for Federal Managers class is usually presented twice a year to a mixed agency audience of about 50 to 60 land managers per year. In addition, NPS had provided professional information through its ongoing series of publications, which include preservation briefs encompassing a wide range of preservation problems and treatments, all within the context of the Secretary's Standards for Historic Preservation Projects. NPS had also provided information, policies, standards, and guidelines for federal agencies, state and local governments, professionals in the preservation field, homeowners, and the general public.
				Over 35 publications were available to the general public through NPS

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EDUCATIONAL, PROMOTIONAL, AND REPORTING DUTIES (con't)				
110(h)	Requires establishment of an annual awards program in recognition of outstanding contributions to the preservation of historic resources by officers and employees of federal, state, and certified local governments.	Interior	NA	<p>regional offices, state historic preservation offices, and the U.S. Government Printing Office. Copies of these public preservation programs to the historic preservation programs in colleges and universities in the United States, as well as to preservation organizations in other countries, to provide students and other preservation professionals access to this information. In addition, traveling exhibits dealing with architecture and archeology have been prepared and are available to museums, schools, and other interested institutions or organizations. NPS also regularly employed students in preservation-related disciplines to provide them on-the-job training.</p> <p>The awards program had not been established. According to Interior officials, higher priority was given to developing standards, guidelines, regulations, training, and a historic properties leasing program as required by other sections of the act. However, NPS had stimulated the development of several awards managed by others that contribute to the same purpose without placing the administrative burden on the Service. These include the Appleman-Judd Award and the Charles Peterson Prize.</p>

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<b>EDUCATIONAL, PROMOTIONAL, AND REPORTING DUTIES (con't)</b>				
202(a)(7)	Requires that federal agencies, state and local governments, Indian tribes, and others be informed and educated as to ACHP's authorized activities.	ACHP	NA	According to the ACHP, its training course entitled "Federal Projects and Historic Preservation Law" had been given 25 times in 11 cities since Jan. 1981, and most federal agencies having programs that regularly affect historic and cultural properties had sent trainees. In addition, ACHP said that special training programs had been provided to cities receiving Community Development Block Grant Funds, to agencies administering "Jobs Act" programs, and to the city of Chicago, which had particular problems with section 106 reviews.
202(b)	Requires that ACHP's annual report provide its assessment of current and emerging problems in the field of historic preservation and an evaluation of the effectiveness of the programs of federal agencies and others in carrying out the act's purposes.	ACHP	NA	ACHP only generally assesses the current and emerging problems in the field of historic preservation, and this is done through its annual report. According to ACHP, it had not evaluated the effectiveness of federal agencies' and others' programs in carrying out the act's purposes because funds or staff were lacking. ACHP expected to undertake some evaluations when its new data-processing system, which was being procured, was in full operation. However, ACHP did not expect to undertake detailed evaluations until more funds were available or until staff time was freed up by a decrease in some other operating area.

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EDUCATIONAL, PROMOTIONAL, AND REPORTING DUTIES (con't)				
213	Requires a report to ACHP detailing the significance of any historic property; describing the effects on the property of any proposed undertaking; and recommending ways to avoid, minimize, or mitigate adverse effects.	Interior, at the request of the Chairman of ACHP.	NA	According to Interior officials, the National Park Service has provided ACHP 10 reports on the legal status and historic significance of historic properties listed in or determined eligible for the National Register, to honor its responsibilities under section 213 of the National Historic Preservation Act as amended (16 U.S.C. 470u), and section 800.13(c)(1) of the ACHP regulations (36 CFR 800). However, Interior officials said that Interior would not duplicate those activities that are normally carried out by ACHP staff, such as recommendations on mitigation, although this was done on two occasions.
306(a)	Requires the Secretary of the Interior and the Administrator of the General Services Administration to enter into a cooperative agreement with the Committee for a National Museum of the Building Arts, Incorporated, to operate a national	Interior and the General Services Administration.	NA	A cooperative agreement was entered into on June 7, 1982, and finalized on July 16, 1982.

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<b>EDUCATIONAL, PROMOTIONAL, AND REPORTING DUTIES (con't)</b>				
	center to commemorate and encourage the building arts and to preserve and maintain a nationally significant building.			
306(c)	Authorizes and directs that matching grants-in-aid (up to \$500,000 per fiscal year) be provided to the committee referred to in section 306(a) for its programs related to historic preservation.	Interior	NA	According to Interior officials, Interior had not requested appropriations for grants to the National Building Museum because of the need to control federal deficits nor had any money been appropriated by the Congress for this purpose.
502c	Requires a report (including legislative and administrative recommendations) to be submitted to the President and the Congress on preserving and conserving the intangible elements of American cultural heritage such as arts, skills, folklore, and folkways.	Interior, in cooperation with the American Folklife Center of the Library of Congress.	Dec. 12, 1982.	The report was sent to the President and the Congress on June 1, 1983.

<sup>c</sup>Section number refers to section of 1980 amendments.

<u>Section</u>	<u>Requirement</u>	<u>Responsible agency</u>	<u>Deadline</u>	<u>Status as of February 13, 1984</u>
EDUCATIONAL, PROMOTIONAL, AND REPORTING DUTIES (con't)				
503C	Requires preparation of a report on federal tax laws relating to historic preservation.	ACHP, in cooperation with the Secretaries of the Interior and the Treasury.	Dec. 12, 1981.	ACHP prepared, adopted, and on Nov. 22, 1983, submitted the mandated report to the President and the Congress. The report was delayed because the Economic Recovery Tax Act was enacted shortly after the National Historic Preservation Act Amendments and, according to ACHP, it did not make sense to analyze the tax laws until the effects of this major change in the tax code could be evaluated.
504C	Requires submission of a report directly to the President and the Congress reviewing the operation of the Historic Preservation Fund and the national historic preservation program, and making funding and other recommendations.	Interior	June 1, 1986.	Interior says the report will be prepared as required by June 1, 1986.

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<u>Section</u>	<u>Requirement</u>	<u>Responsible agency</u>	<u>Deadline</u>	<u>Status as of February 13, 1984</u>
<b>EDUCATIONAL, PROMOTIONAL, AND REPORTING DUTIES (con't)</b>				
506C	Requires a comprehensive study and formulation of recommendations for a coordinated system of cultural parks and historic conservation districts in definable urban areas. Also, the study is to propose alternatives concerning the management and funding of such a system.	Interior	Dec. 12, 1982.	Although Interior officials favor the concept of cultural parks and historic conservation districts, work on this study was deferred until resources could be made available. According to Interior officials, this study had low priority among the numerous 1980 amendment items requiring action.
507C	Requires submission of a report to the President and the Congress on fire in historic properties. The report is to include a review of federal laws and recommendations regarding the appropriate federal role in the protection of historic properties from damage by fire.	Interior, in cooperation with the Secretary of the Treasury and the Administrators of the United States Fire Administration and the Federal Insurance Administration.	June 12, 1982.	The study had not been started because, according to Interior officials, this requirement received low priority among the numerous 1980 amendment items requiring action. Interior officials said that work would be started when time and resources permit. In the meantime, the National Trust for Historic Preservation and the Federal Emergency Management Agency were administering an antiarson project which had developed information on preventing arson in historic buildings. This information was made available to neighborhood groups and state and local officials.

Section number refers to section of 1980 amendments.